

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff, 11-CV-03304 (RJH)

-against-

AMERICAN MOTORISTS INSURANCE COMPANY, as
successor in interest to CARLISLE INSURANCE
COMPANY, and WESTCHESTER FIRE INSURANCE
COMPANY,

Defendants.

**PLAINTIFF THE CITY OF NEW
YORK'S ANSWER TO
COUNTERCLAIM OF
DEFENDANT AMERICAN
MOTORISTS INSURANCE
COMPANY (INCLUDED WITH
DEFENDANT'S SECOND
AMENDED ANSWER)**

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Plaintiff, The City of New York (the "City"), by its counsel Michael A. Cardozo, Corporation Counsel of the City of New York, for its Answer to the counterclaim asserted by defendant American Motorists Insurance Company ("AMIC"), as successor in interest to Carlisle Insurance Company ("Carlisle") in its "Second Amended Verified Answer to the Second Verified Amended Complaint and Counterclaim," alleges as follows:

1. Admits upon information and belief that Carlisle issued a liability insurance policy to Diamond Asphalt Corporation ("Diamond") bearing number GLP 1001078, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 of the Counterclaim.

2. Admits upon information and belief the allegations contained in paragraph 77 of the Counterclaim. Admits that the policy attached to AMIC's amended answer as Exhibit A states that it is effective from February 4, 1995 until December 4, 1996.

3. Denies the allegations contained in paragraph 78 of the Counterclaim.

4. Admits upon information and belief the allegations contained in paragraph 79 of the Counterclaim, but refers the Court to the applicable policy itself, which provides the complete definition of “bodily injury.”

5. Admits upon information and belief, that the policy issued by Carlisle to Diamond includes multiple additional insured endorsements, and admits that the policy attached to AMIC’s answer as Exhibit A contains multiple endorsements; and otherwise denies the allegations contained in paragraph 80 of the Counterclaim.

6. Paragraph 81 of the Counterclaim contains conclusions of law to which no response is required. To the extent a response is required, admits that the policy attached to AMIC’s answer as Exhibit A contains additional insured endorsements naming Diamequip Rentals. Inc. and New York City Transit Authority, but refers the Court to the applicable policy itself for the terms of the policy.

7. Denies the allegations contained in paragraph 82 of the Counterclaim.

8. Admits the allegations contained in paragraph 83 of the Counterclaim.

9. Paragraph 84 of the Counterclaim contains conclusions of law to which no response is required; to the extent a response is required, denies those allegations.

10. Denies the allegations contained in paragraph 85 of the Counterclaim.

11. Admits the allegations contained in paragraph 86 of the Counterclaim.

12. Paragraph 87 contains conclusions of law to which no response is required; to the extent a response is required, denies those allegations.

First Affirmative Defense to Counterclaim

The counterclaim fails to state a cause of action.

Second Affirmative Defense to Counterclaim

AMIC is barred from relief by the doctrine of laches.

Third Affirmative Defense to Counterclaim

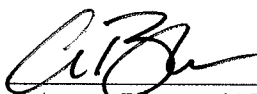
AMIC is barred from relief by the doctrines of waiver and estoppel.

WHEREFORE, the City demands judgment:

- (a) Dismissing defendant American Motorists Insurance Company's Counterclaim in its entirety;
- (b) Granting the relief sought by the City in its Second Amended Complaint;
- and
- (c) For such other relief as this Court may deem just and proper.

Dated: New York, New York
October 17, 2011

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